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Supreme Court, U.S.
FILED
09-656 DEC 3 - 2009
OFFICE OF THE CLERK

No. ——

In The
Supreme Court of the United States

SENKE ZADRIMA,

Petitioner,

v.

ERIC H. HOLDER, JR.,
United States Attorney General,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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December 3, 2009

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QUESTION PRESENTED

Did the Second Circuit Court of Appeals Deny the Petitioner her fundamental rights to due process under the Fifth Amendment by affirming the decisions of the Board of Immigration Appeals and the Immigration Judge in an egregious departure from the accepted and usual course of judicial proceedings?

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Senke Zadrima asks that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

CITATION TO OPINIONS BELOW

The decision of the United States Court of Appeals for the Second Circuit, Zadrima, *v. Holder*, Docket No., 08-4954 (2d Cir. 2009), is attached to this petition as **Appendix A**. The Order of the United States Court of Appeals for the Second Circuit denying Petitioner's petition for a panel rehearing is attached hereto as **Appendix D**. The agency opinions issued by the Immigration Judge, and affirmed by the Board of Immigration Appeals, *In re Zadrima*, Nos. 096-434-967 (BIA September 19, 2008), are attached hereto as **Appendices B and C**.

STATEMENT OF JURISDICTION

The Court of Appeals for the Second Circuit entered its judgment denying the timely submitted petition for rehearing on September 10, 2009. The order denying the petition for rehearing is attached hereto as **Appendix D**. The Court of Appeals denied Zadrima's timely petition for review of the decision of the Board of Immigration Appeals on July 15, 2009. The order denying review of the agency appeal is attached hereto as **Appendix A**. This Honorable Court's jurisdiction is hereby invoked pursuant to 28 U.S.C. §1254, as the decisions below served to deprive Senke Zadrima of her rights as granted under the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Central to the matter *sub judice* are the Fifth Amendment rights granted to aliens seeking relief from the Courts of the United States, which Amendment states, in pertinent part, that "No person...shall be deprived of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

The gravamen of the instant petition lies in the Court of Appeals' improper application of the substantial evidence standard, as a means of reviewing a claim under Article III of the Convention Against Torture. The Circuit Court, in applying the substantial evidence standard to review the matter of Senke Zadrima misapplied the standard by failing to review the record in a cumulative manner, and further failed to acknowledge that the Immigration Judge and the BIA improperly concluded that the record evidence did not compel the conclusion that trafficking crimes in Albania are being perpetrated by or with the acquiescence of the Albanian government. See **Appendix A**. The Court of Appeals' decision is arbitrary, capricious and lacks support within the ambits of its own precedential decisions and as such is a clear violation of Ms. Zadrima's Fifth Amendment rights. A concise statement of the case's history and underlying facts is herein provided so as to set forth the grave repercussions of the decisions below.

The Petitioner, Ms. Zadrima is a native and citizen of Albania who arrived to the United States on or about August 25, 2003. She left Albania because her

life was in jeopardy and she feared being kidnapped and sold into prostitution. Ms. Zadrima's father has been involved in the Democratic Party since its inception. His political activities against the government led to a situation where Ms. Zadrima could not rely on the government to protect her from being a victim of trafficking crimes.

On December 19, 2000, Ms. Zadrima was almost kidnapped and sold abroad to work as a prostitute. At approximately 7:00 a.m. Ms. Zadrima was walking to school with her friend, Silvania, when a car of three men wearing black clothing and masks approached them. The car stopped directly behind them and suddenly three people exited the car and began chasing after them. Ms. Zadrima and her friend began to run and Ms. Zadrima hid behind a bush. However, the masked men caught her friend as she began to scream for help. Because Ms. Zadrima's friend began to scream for help, the two men that chased Ms. Zadrima were diverted to help control Ms. Zadrima's friend. However, as they stopped chasing Ms. Zadrima, she testified that she heard the men say that they would get her another time. Ms. Zadrima watched her friend being dragged to the kidnapper's car, and taken away as she struggled and screamed for help. After the incident, Ms. Zadrima walked home using a different route than usual and arrived home terrified and crying because of what had just occurred.

After Ms. Zadrima told her parents about the incident on December 19, 2000, her father notified the police. However, the police did not actively investigate, and explained to Ms. Zadrima's father that they could not be responsible for what happened to his daughter's friend given that many young women are kidnapped in

Albania. Ms. Zadrima contacted her friend's family after the kidnapping and was informed that her whereabouts were never discovered.

Ms. Zadrima did not return to school after the December 19, 2000 incident as she feared for her safety. She remained in her home and would only leave if her family, namely her parents, accompanied her. In June of 2003, as her father was riding his bike home from work, a man stopped him and told him that they would kidnap his daughter. However, although her father was very distraught with this encounter, he did not go to the police because he felt it would be a waste of time. Ms. Zadrima does not want to return to Albania because she still fears she will be kidnapped, raped and sold into prostitution.

Although Ms. Zadrima's testimony was found not credible, She submitted documentary proof which showed that a person in her position was likely to be kidnapped and sold into prostitution, and that the government remains willfully blind to the suffering of victims of such human trafficking.

On June 22, 2007, The Immigration Judge denied Ms. Zadrima's application for relief under Article III of the Convention Against Torture. The Immigration Judge properly concluded that the act of taking one out of Albania and bringing her to another country to engage in prostitution constitutes torture. See **Appendix C**. However, the Immigration Judge erred in finding that Ms. Zadrima had not met her burden of establishing that any torture she might face was done by or with the acquiescence of the government.

On September 19, 2008, the Board of Immigration Appeals affirmed the Immigration Judge's decision, "finding no error in the Immigration Judge's determination that [Ms. Zadrima] has failed to adequately demonstrate that it is 'more likely than not' that she would be subject to torture with the consent or acquiescence of a public official in Albania." See **Appendix B.**

On March 14, 2008, Senke Zadrima filed a petition for review of the agency's determination with the Second Circuit Court of Appeals. In its decision, the Second Circuit denied the petition for review on July 15, 2009. See **Appendix A**. The Second Circuit issued a decision finding that under the substantial evidence standard, the IJ and BIA had properly denied Ms. Zadrima's application for relief under Article III of the Convention Against Torture.

The Second Circuit, in denying Ms. Zadrima's Petition for Review, states that "the record does not indicate that trafficking crimes in Albania are being perpetrated by or with the acquiescence of the government. See **Appendix A**. However, this finding is clearly contrary to the weight of the evidence in the record of proceedings.

Senke Zadrima asserts that the Court of Appeals for the Second Circuit in contravention of precedent violated their rights under the Fifth Amendment to due process of law by misapplying the substantial evidence standard, in their failure to review the record as a whole, and in failing to consider the overwhelming evidence in the record.

REASONS FOR GRANTING THE PETITION

The Second Circuit's decision in this case was an egregious departure from the accepted and usual course of judicial proceedings. They affirmed the decisions of the BIA and IJ although both failed to render a judgment on the applications of Petitioner Senke Zadrima against the weight of the evidence.

The Second Circuit Erred In Finding That Ms. Zadrima Did Not Meet Her Burden Of Establishing a Claim For Relief Under Article III Of The Convention Against Torture As The Record Compels A Finding That Trafficking Crimes In Albania Are Committed With The Acquiescence Of The Government.

Article III of the Convention Against Torture provides relief of withholding of removal if the alien can prove she would be tortured in her home country. *See* 8 C.F.R. §§208.16, 208.18. An alien also must show that her fear of torture is present and that the torture was instigated with the consent or acquiescence of a public official, or a person acting in an official capacity. *See* 8 C.F.R. §§208.16, 208.18. Unlike a grant of asylum, withholding of removal based on the Convention Against Torture requires the Court to prevent an alien's removal if they find that there is a clear probability she will be tortured if returned to the country of removal. *See* 8 C.F.R. §§208.16, 208.18.

The Immigration Court erred in rejecting Ms. Zadrima's application for relief under Article III of the Convention Against Torture. A Convention Against

Torture claim focuses solely on the likelihood that the alien will be tortured if returned to his or her home country, regardless of the alien's subjective fears of persecution or his or her past experiences. Unlike an asylum claim, the Convention Against Torture claim lacks a subjective element, focuses broadly on torture without regard for the reasons for that treatment, and requires a showing with respect to future, rather than past, treatment. *See* 8 C.F.R. § 208.16(c)(3), (4); Wang v. Ashcroft, 320 F.3d 130, 144 & n. 20 (2d Cir. 2003) (discussing the showing necessary to establish entitlement to CAT relief).

Consequently, an alien's CAT claim may be established using different evidence and theories than the alien's INA claims. The CAT claim therefore must always be considered independently of the resolution of the alien's claims under the INA. The CAT regulations reflect the independence of the INA and CAT as avenues of relief from removal, as well as CAT's objective focus, by requiring the agency to consider "all evidence relevant to the possibility of future torture," including evidence of current country conditions, without requiring any specific type of showing. *See* 8 C.F.R. § 208.16(c)(3).

Pursuant to 8 C.F.R. § 208.18 (a)(1) The burden of proof is on the applicant ... to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal.

In assessing whether it is more likely than not that an applicant would be tortured ... all evidence relevant to the possibility of future torture shall be considered, including, but not limited to ...Evidence of gross flagrant or mass violations of human rights within the

country of removal; and other relevant information regarding conditions in the country of removal. See 8 C.F.R. §§ 208.16 (c)(2) and (3).

Therefore, an adverse credibility determination made in the asylum context should not necessarily affect the BIA's consideration of the alien's CAT claim. Ramsameachire v. Ashcroft, 357 F.3d 169 at 205 (2d Cir. 2004). While an asylum claim depends on an alien's credibility, because the alien must establish, through credible testimony, either that he or she has suffered past persecution, or that he or she subjectively fears future persecution, to prevail on a CAT claim the alien need only proffer objective evidence that he or she is likely to be tortured in the future. Id at 206.

The U.S. State Department's Country Reports on Human Rights from 2001 cites to the serious problem that exists in Albania regarding the trafficking of young women. The U.S. State Department's report specifically mentions that young girls are often kidnapped from their families and taken abroad to work as prostitutes. As such, it is more likely than not that Ms. Zadrima will suffer torture upon return to Albania.

Furthermore, the Immigration Judge even noted in his decision that the State Department Country Report for 2006, released on March 6, 2007, acknowledges and discusses the difficulties for women in Albania posed by kidnapping, sexual abuse, and trafficking for sexual purposes in particular. The report also notes that police officers continue to be involved in various forms of corruption related to trafficking. The Immigration Judge even stated in his decision that:

> What the Court gathers from the annual report and from the *secondary evidence* as a whole, is it's undeniable. There has been a problem in Albania concerning sex trafficking. It's clear that the problem has not been dealt with adequately... (emphasis added)

Based on the 2006 State Department Country Report for Albania and the Immigration Judge's own words concerning kidnapping and sex trafficking, it is clear that Ms. Zadrima still has a valid reason to fear returning to Albania because, although the government has made some attempts to address this problem, it has not been dealt with adequately. In addition to the State Department Country reports, Ms. Zadrima provided additional documentation of Albania's trafficking problem. In one article, the Albanian cities of Fier and Berat are described as "famous for prostitute trafficking." It further reports that "since the 1992 creation of Albanian democracy, 10,000 local women have been taken to Italy and 20,000 to Greece."

The assertion that this could occur without the acquiescence of the government of Albania strains credulity. Also, in order to meet the burden of proof, Ms. Zadrima need not show that the government of Albania consents or approves of the trafficking. She merely needs to show that "government officials remain willfully blind to an act, and thereafter breach their legal responsibility to prevent it." See *Kouzam v. Ashcroft*, 361 F. 3d 161, 107-171 (2d Cir. 2004).

To allow 30,000 young Albanian women to be trafficked into Italy and Greece for the purposes of

prostitution requires, at the very least, a willful blindness.

Therefore, the Second Circuit's denial of Ms. Zadrima's claim for relief was not supported by the testimony and evidence in the record.

Accordingly, Ms. Zadrima should be granted relief under Article III of the Convention Against Torture since there is a clear probability that she will suffer torture if returned to Albania. *See* 8 C.F.R. §§208.16, 208.18; Matter of G-A-, 23 I&N Dec. 366 (BIA 2002). The proper result is for this Honorable Court to grant the petition for review, reverse or vacate the BIA decision and remand the proceedings to prevent Ms. Zadrima from being persecuted, namely kidnapped and sold abroad as a prostitute, if forced to return to Albania.

CONCLUSION

For the reasons set forth above, the petition for writ of certiorari should be granted.

Respectfully submitted,

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